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Throughout multiple wars veterans have been inflicted with injuries, illnesses and disorders as a result of combat action. Sometimes these conditions have latent periods, which prevent immediate treatment. During these periods, a service member can be discharged under less than honorable conditions without having identified the combat related injury. These injuries range from exposure to Agent Orange, Gulf War Syndrome, Post-traumatic Stress Disorder and Traumatic Brain Injury. Legal precedent confirms that these injuries do not justify pardoning the infractions that led to the discharge. Unfortunately, due to the delayed onset of injury, those with less than honorable discharges are released from service before the combat injury sustained in the line of duty can be treated or identified. This results in combat injuries sustained under honorable conditions from receiving medical care from the Department of Veterans Affairs. The current system applies subjective standards for determining eligibility through regional offices and withholds medical care for service members released under dishonorable conditions but allows full medical benefits for honorably discharged Veterans who are incarcerated later for felonies. Although the individual broke their contract or political obligation to serve honorably, the U.S. Government is morally responsible for providing basic health care for the treatment of combat related injuries. This obligation extends to injuries incurred in the line of duty regardless of the service member's discharge status. This moral obligation is rooted in a promissory based obligation to the public and a principle based obligation based on honorable service at the time of injury.

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MASTER OF MILITARY STUDIES

COMBAT INJURIES: PROVIDING MEDICAL CARE FOR ALL VETERANS

SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF MILITARY STUDIES

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Executive Summary

Title: Combat Injuries: Providing Medical Care for all Veterans

Author: Major Steven M. Clifton

Thesis: It is the moral obligation of the government to provide basic medical care to treat combat related injuries that occurred in the line of duty regardless of an individual's discharge status.

Discussion: Throughout multiple wars veterans have been inflicted with injuries, illnesses and disorders as a result of combat action. Sometimes these conditions have latent periods, which prevent immediate treatment. During these periods, a service member can be discharged under less than honorable conditions without having identified the combat related injury. These injuries range from exposure to Agent Orange, Gulf War Syndrome, Post-traumatic Stress Disorder and Traumatic Brain Injury. Legal precedent confirms that these injuries do not justify pardoning the infractions that led to the discharge. Unfortunately, due to the delayed onset of injury, those with less than honorable discharges are released from service before the combat injury sustained *in the line of duty* can be treated or identified. This results in combat injuries sustained under honorable conditions from receiving medical care from the Department of Veterans Affairs. The current system applies subjective standards for determining eligibility through regional offices and withholds medical care for service members released under dishonorable conditions but allows full medical benefits for honorably discharged Veterans who are incarcerated later for felonies.

Conclusion: Although the individual broke their contract or political obligation to serve honorably, the U.S. Government is morally responsible for providing basic health care for the treatment of combat related injuries. This obligation extends to injuries incurred *in the line of duty* regardless of the service member's discharge status. This moral obligation is rooted in a promissory based obligation to the public and a principle based obligation based on honorable service at the time of injury.

Preface

The idea for this topic developed from my experiences as an Executive Officer on recruiting duty. Over the course of three years I dealt with Marines who needed treatment for PTSD and TBI. Some of these cases required legal action for actions that occurred outside the scope of their injuries. With the latter, I dealt with the usual legal issues, while I coordinated with the Wounded Warriors Regiment to get the individual appropriate medical treatment. Because of the potential for the Marine losing medical care, the situation cemented my opinion that all combat injuries that occurred during honorable service should have care provided by the Department of Veterans Affairs regardless of the discharge. The purpose of the thesis is not to exonerate an individual because of his or her injury, nor to provide full medical benefits, but to ensure he or she gets treatment for combat injuries regardless of the discharge. If the injury occurred under honorable conditions while defending our nation, I believe we have a responsibility to treat that injury.

I would like to thank my family for their support with my deployments over the years and for providing me the time to write about and research this topic. I would also like to thank the members of the Medical Cell at the Wounded Warrior Regiment for their assistance in supporting our Marines and their interview and conversation with me. My hope is that this thesis assists them in finding treatment for our combat veterans who were discharged under less than honorable conditions with the assumption that they were serving honorably at the time of their combat injury.

INTRODUCTION

Members of the Armed Forces are at risk for developing delayed onset medical conditions arising from experiences in combat. In fact delayed onset medical conditions still affect those who served in the Gulf War and the Vietnam War. Today, these medical conditions are especially prevalent in those who served over the past ten years in Operation IRAQI FREEDOM and Operation ENDURING FREEDOM. Delayed onset medical conditions will result from any armed conflict where the government employs military force. Should members of the U.S. Armed Forces who received an Other Than Honorable (OTH) discharge, Bad Conduct discharge (BCD) or a Dishonorable discharge (DD) receive medical care to treat combat related injuries? Should the combat injuries include those known at the time of separation or those that developed over time? Answering these questions is required to maintain the sacred bond between the military, society, families, the individual volunteer and, in some cases, a draftee.

The intent of the armed forces is to train men and women to fight the nation's battles and win wars. Secondly it fosters the qualities of responsible citizenship to those placed in their trust. The Marine Corps recruits to this by stating, "we prepare Marines with the skills, education and financial security to become both effective warriors and quality citizens" and that "every Marine takes these values into his or her community to make a difference after service."

[1] This is not a statement that a service is responsible for the individual actions of a service member, but that a service has a level of responsibility to care for that member regardless of their discharge. Fighting in combat is the pinnacle of a nation's requirement for the armed forces and injuries incurred from combat must be treated regardless of an individual's disposition of service. The nature of combat injuries and the latent effects of those injuries preclude the U.S. Government from abdicating care because a service member is discharged under less than

honorable conditions. It is the moral obligation of the government to provide basic medical care to treat combat related injuries that occurred in the line of duty regardless of an individual's discharge status. The moral obligation stems from the belief that the combat injury would have been treated if it were immediately diagnosed. It is only the delayed diagnosis or the delayed onset of the illness that prevented it from being treated. Not knowing about the injury does not relinquish responsibility to treat it because of future dishonorable service. This thesis will define the government's moral obligation to treat combat injuries of those discharged under dishonorable conditions, review the two key impediments (disqualification and delayed onset illnesses) to fulfill that obligation and discern how to overcome those impediments by reviewing historical cases of combat injuries, legal precedent and United States government (USG) policy.

MORAL OBLIGATION

President Clinton was quoted as saying that "Caring for Veterans is not a partisan issue, it is a national obligation."[2] He was specifically addressing Gulf War veterans on finding the cause and providing care for Gulf War Syndrome. Although specifically targeted for the care of Gulf War Veterans, it is a statement that spans all wars and battles. This obligation must be defined legally and morally. Many combat injuries have delayed effects with the manifestation of symptoms spanning years or decades to develop. This creates difficulty when identifying the relationship between the cause and effect of the injury. The delayed identification and latent onset of illnesses prevents immediate treatment and can allow service members to go untreated prior to separation. The delay in treatment requires the government to treat all combat injuries that occurred within the line of duty resulting in a moral obligation to provide basic medical care for the combat injury that supersedes the requirement of future honorable service. This

statement is predicated on the assumption of honorable service at the time of the injury. A review of three sources of moral obligation and the litigation of historical illnesses resulting from combat will focus the moral and legal requirements of the U.S. Government in providing initial health care for all combat injuries.

These sources are political obligations, promissory obligations, and obligations based on moral principle. The Stanford Encyclopedia of Philosophy defines political obligation as "a moral duty to obey the laws of one's country or state."[3] Every service member who enters the armed forces enters into a legal contract with the United States Government. A service member who is discharged under conditions of dishonorable service has violated their obligation. These individuals forfeit any right to benefits promised at their enlistment by law with the violation of their political obligation. Conversely, the political obligation of the government is supported because the service member failed to uphold the terms required for military service.

Does the diminished faculty of an individual suffering from Post-traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) redress the issue of the service member's political obligation? An analysis of PTSD within the legal culture is essential over other physical injuries due to the potential to affect an individual's mental state. A study of appellate criminal cases, in regards to culpability of PTSD, affirms that a diagnosis of PTSD does not release (in most cases) an individual from personal responsibility.[4] Additionally this applies to the organization providing treatment, whether the treatment is effective or ineffective. Blaming the VA for the treatment provided or lack of treatment provided was a common theme in the appellate court cases, but the VA was not implicated legally as a causal factor in those situations.[5] The government is not held liable for the actions of an individual, but an "increase in PTSD claims in civil litigation is due to society's growing recognition that traumatic exposure

can have significant and long-lasting consequences."[6] Violating the political obligation forfeits the treatment for the significant and long lasting consequences, but these types of injuries form the basis for the promissory obligation made by the armed forces.

"Promissory obligations are voluntary; we don't have to make promises, but we must keep them when we do."[7] The armed forces, specifically the Marine Corps, recruit to the notion that service will lead to better citizens. This is not binding by law but basically an agreement that the armed forces will develop values leading to a quality citizen.[8] More than an agreement with the service member, it is an agreement with the American population as recruiting themes target the potential recruit, but also the population as a whole. It is not a statement that the armed forces are responsible for an individual's adherence to the values, only that individuals will be provided a sound foundation to build those values. The National Center for PTSD uses the criterion set by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) which states that one component of PTSD is that "the disturbance (resulting in the PTSD) causes clinically significant distress or impairment in social, occupational, or other important areas of functioning."[9] Providing treatment for combat injuries, specifically those that affect the mental faculties of a service member, allows the armed forces to maintain their promissory obligation.

The Associated Press printed an article about a Marine involved in a motor vehicle accident. He had been driving while intoxicated and was responsible for killing another driver. The Marine had symptoms of PTSD but had not sought treatment.[10] The widow "believes the Marines bear some blame in her husband's death" because the Marine should have received treatment.[11] The widow made an argument based on a promissory obligation. Her statement may not have legal backing, but it is a moral argument based on the belief that an injury was

incurred from combat and that injury should have been treated because it affected the mental faculties of the individual. This injury and the treatments for it are based on the fact that it occurred under honorable conditions; these conditions are the basis for an obligation based on moral principle.

Joseph Brennan described Immanuel Kant's categorical imperative "as an indispensable guide as to what we *ought* to do."[12] What we *ought to do* is our guide to identify the moral principle that directs us to provide basic medical care for combat injuries for those that are currently disqualified. This moral principle is limited in scope for those actions that occurred *in the line of duty*. *In the line of duty* means "an injury or disease incurred or aggravated during a period of active military, naval, or air service unless such injury or disease was the result of the veteran's own willful misconduct or…was a result of his or her abuse of alcohol or drugs."[13] By occurring *in the line of duty*, the combat injury took place before the service member violated their political obligation to serve honorably. The government can assume its political obligation and deny benefits or it can follow a moral obligation based on moral principle. Army regulation 350-1 states a moral principle in their Warrior Ethos: "… I will never leave a fallen comrade."[14] Whether deceased or injured, the ethos does not discern the combat veteran's future service, only that it is a requirement to help. This requirement is easy to identify for obvious physical injuries and any treatment needed will be provided, but those with a delayed onset may not be identified for years. The crux of the moral principle is that if the injury could have been immediately identified, it would have been treated. When two injuries occur from a single hostile action, why treat one and not the other because it took years vice seconds to develop?

While following a long tradition of Presidential Veterans Day addresses, President Obama stated the following:

> We owe (our veterans) a debt of honor, and it is our moral obligation to ensure they receive our support for as long as they live as proud veterans of the United States Armed Forces…we will honor them and all who serve by working tirelessly to give them the care, the benefits, and the opportunities they have earned.[15]

When referring to veterans it is assumed to be given in the context of the legal definition as "discharged under conditions other than dishonorable."[16] The address dictates that it is a moral obligation to provide care (medical) to those who are and have served honorably. This statement should be applied to treat those combat injuries that occurred during honorable service regardless of what future events occur. Historically, the combat injuries have ranged from physical to mental wounds, but the focus of the argument has been on the effects of PTSD as a reason to defend that we are morally bound to treat our service members' combat injuries. PTSD is the most extreme example because it affects the intangible state of an individual's mind. This injury, especially when combined with TBI, has more legal implications for the U.S. Judicial System than any other injury; criminal or civil action and compensation lead some to believe it will overwhelm insurance litigations systems.[17] Treating PTSD for combat injuries of every service member is a wise option that also benefits the larger community, but the basis for supporting a moral principle is no different than treating all combat injuries.

The injuries we will review have effects whose onset may be delayed up to thirty-four years. This can make it virtually impossible to link symptoms to combat service. The moral point is that if the service member serves his tour in combat honorably he should be entitled to medical benefits to care for a combat injury, which if it had manifested immediately, would have been treated. If the injury had been immediate and visual, the government would have treated the wound at the time of injury. If a soldier is attacked with an improvised explosive device, receives shrapnel to an arm, and watches his comrade die the individual will receive treatment

for the shrapnel, may be diagnosed for TBI from the blast and likely reviewed for PTSD. Assume the individual is treated and given a good bill of health with the available information at the time. Six months later, for issues not related to any injuries, he gets discharged under dishonorable conditions. The eligibility for VA medical care ceases regardless of the injury's origins. Now discharged without VA medical benefits, reoccurring conditions develop from the shrapnel and a significant event triggers PTSD resulting in previously covered injuries going untreated. This example represents the core of the three moral arguments: that the government has fulfilled its political obligation but has not met the promissory obligation and obligations based on moral principle.

KEY IMPEDIMENTS

Disqualification

Attaining eligibility for Veteran Administration (VA) benefits relies on what a veteran is and what type of discharge that individual receives. Defining these parameters puts forth a common understanding in order to focus on what group does not receive benefits and argue why they should.

The VA lists the following as qualifications for medical benefits:

> To be considered a "**veteran**" eligible for Department of Veterans Affairs (VA) Health Care benefits, a former service-member must have been discharged **"under conditions other than dishonorable."** Under VA regulations, administrative discharges characterized by the armed services as "Honorable" or "General Under Honorable Conditions" are qualifying, and punitive discharges ("Dishonorable" or "Bad Conduct") issued by ***general*** courts-martial are disqualifying.
> The in-between categories, administrative "Other than Honorable" discharges, and punitive "Bad Conduct Discharges" issued by ***special*** courts-martial, ***may or may not*** be disqualifying for purposes of general VA benefit eligibility or VA health benefits eligibility specifically. In assessing whether such discharges were issued "under conditions other than dishonorable," VA must apply the standards set forth in *Title 38 Code of Federal Regulations (C.F.R.) §3.12*.

> An individual with an "Other than Honorable" discharge that VA has determined to be disqualifying under application of title 38 C.F.R. §3.12 still retains eligibility for VA health care benefits for service-incurred or service-aggravated disabilities unless he or she is subject to one of the statutory bars to benefits set forth in *Title 38 United States Code §5303(a).*.[18]

Referenced from Title 38 Code of Federal Regulations (C.F.R.) §3.12d and §5303(a), other than dishonorable conditions result from a dishonorable discharge and, in specified cases, to other than honorable separations and bad conduct discharges.[19] The main factor in determining characterization of service for medical services under Title 38 is based on the determination of regional VA offices. The legislation denies medical benefits for all service members who are discharged under dishonorable conditions. In accordance with Title 38, they are not veterans.

The American War Library defines the following:

> A **veteran** is defined by federal law, moral code and military service as *"Any, Any, Any"*... A military veteran is *Any* person who served for *Any* length of time in *Any* military service branch. A **war veteran** is any GI (Government Issue) ordered to foreign soil or waters to participate in direct or support activity against an enemy. The operant condition: Any GI sent in harm's way. A **combat veteran** is any GI who experiences any level of hostility for any duration resulting from offensive, defensive or friendly fire military action involving a real or perceived enemy in any foreign theater. [20]

This definition focuses on any level of hostility and it is this hostility that results in wounds (physical or mental) that constitute a combat injury. The Department of Defense (DoD) defines injury (in regards to benefits) as "hospitalized for treatment from a wound, illness, or injury you received in a combat zone, hostile fire area, or from being exposed to a hostile fire event."[21] Additionally, the VA allows up to five years from a service member's discharge to identify combat injuries due to the latent manifestation of various injuries which refines the definition of combat injury to include the latent period. The two definitions complement one another by requiring hospitalization and allowing time for dormant medical issues to develop when

referencing combat injuries. The identification of an injury is left to national standards but the determination of eligibility is left to regional determinations.

Veteran's Affairs Regional Offices (VARO) interpret the eligibility based off of the national guidance that a veteran must have been discharged "under conditions other than dishonorable."[22] The interpretation is bound by specific limits defining dishonorable, but VAROs have authorization to determine if OTH or BCD discharges were issued for violations that are not dishonorable. There are extenuating circumstances to allow those charged with AWOL (absent without leave) and an interpretation of willful and persistent misconduct. Each VARO has the ability to determine what this means. The Wounded Warrior Regiment Medical Cell members have worked with service members who received an other than honorable discharge and based on the VARO's determination, received care from one office but not another when the individual moved.[23] Allowing for a distributed interpretation of what constitutes conditions other than dishonorable creates a system that binds its benefits to honorable service but the definition of "under conditions other than dishonorable" fluctuates.

The insanity defense can also determine eligibility for benefits. Title 38 Code of Federal Regulations (C.F.R.) §3.12 states "A discharge or release from service under one of the conditions specified in this section is a bar to the payment of benefits unless it is found that the person was insane at the time of committing the offense causing such discharge or release or unless otherwise specifically provided (38 U.S.C. 5303(b))."[24] The regulation stipulates that a discharge normally issued under dishonorable conditions shall receive an honorable discharge if he or she is declared insane, which would result in the veteran receiving all medical benefits. The issue is not that certain cases may warrant exoneration with the insanity defense, only that "a comprehensive analysis of appellate criminal cases reveals that in the vast majority of cases the

original trial verdict and sentence was affirmed" that PTSD did not make the individual criminally insane.[25] Since almost all PTSD cases are denied an insanity defense, these individuals if discharged dishonorably would not be eligible for benefits. Ultimately, providing medical care will not stop an individual from using every legal defense to be exonerated from a crime, but it may be the turning point for an individual that prevents a crime, upholding the agreement based moral contract with the public. A second benefit is that an individual will not be able to effectively use their combat experience and injuries to exonerate themselves if their injuries (specifically PTSD) were treated, leaving the legal system to ponder the question of insanity for only those without treatment.

While identifying those not eligible for VA medical benefits it is important to note that one group still receives benefits. The VA continues to provide some level of disability and medical treatment for veterans with an honorable discharge, but who were incarcerated for misdemeanors and felonies after service.[26] This is in stark contrast to service members who received other than honorable discharges, bad conduct discharges and dishonorable discharges, the equivalent of misdemeanors and felonies. Individuals who received administrative or punitive discharges for equivalent or lesser crimes do not rate the same benefits because the latter was punished under the Uniform Code of Military Justice (UCMJ). After 61 days of incarceration for a felony (equivalent of a dishonorable discharge where all benefits are lost), VA disability compensation will be reduced not stopped, any money reduced can be apportioned to immediate family and the veteran will receive medical care that is not already provided by the penal institution.[27] The end result is that a service member could commit a crime in violation of the UCMJ, (resulting in a less than honorable discharge limiting medical care from the VA) but could commit the same crime against local or federal laws and still retain benefits for the time of

incarceration and beyond. Being disqualified for benefits prevents treatment, but the delayed diagnosis and delayed onset of symptoms is the root cause that prevents timely care.

Delayed Onset

Many combat injuries have been specific to certain theaters of war while others have endured throughout every firefight. With a majority of the 21.8 million veterans (12.4 million) having served in Vietnam and the Gulf Wars (Operation Desert Shield/Storm, OIF, OEF, OND), the focus of specific combat injuries will be limited to those operations.[28] Two injuries that have been identified years after the conflict have been the debilitating effects of Agent Orange (Vietnam) and Gulf War Syndrome (GWS). Both illnesses were similar in that for years the causality linking the illnesses to an event in combat was not found. Because the range of illnesses were out of the scope of normal injuries, their delayed identification resulted in service members being discharged before a service connection was made. The mindset for not acknowledging causality or presumption of service connection (in reference to Agent Orange) is quoted by Wilber Scott: "[I]f you lost a leg because of combat, nobody is going to quarrel with the fact that it was due to the exposure in combat. Or if you come back from the South Pacific with a tropical disease, nobody is going to quarrel with what happened. When you have a long latent period, however, there is always room for doubt as to the causal relationship."[29] The doubt has been the obstruction to acknowledging the medical links in both cases and delayed onset of disease prevents immediate treatment, which is the focus of the government's moral obligation.

For the Vietnam War over 72,000 claims were filed as a result of veterans suffering from illnesses born from the herbicide, Agent Orange.[30] The issue surrounding Agent Orange was an

inability to directly link service in Vietnam to various illnesses and studies funded to determine these relationships were cancelled.[31] From the first medical claims processed in 1977 until 1990, when a Center for Disease Control study eventually linked an increased rate of six cancers, resulting in a presumption of service connection to non-Hodgkin's lymphoma, the government did not officially recognize the illnesses obtained from service in Vietnam.[32] Additionally in 2009, "the Secretary of Veterans Affairs announced three new 'presumptive' Agent Orange Conditions: Parkinson's disease, Ischemic heart disease, and B cell leukemias."[33] The reason for the incubation period is "the dioxin in Agent Orange could be stored in the body's fatty tissue and at a later date cause cancer or other diseases."[34] In 2009, after 34 years, Vietnam veterans are able to claim combat related injuries resulting from their service in a war zone. Some of the same issues that prevented treatment of Agent Orange born diseases were faced by veterans of the Gulf War.

Four years after the Gulf War, President Clinton established the Presidential Advisory Committee on Gulf War Veterans' Illnesses to identify the root cause of what became known as Gulf War Syndrome. The illnesses developed from exposure to a gas plume emanating from the destruction of chemical warfare rockets demolished near Khamisiyah, Iraq in 1991.[35] The final report was released in 1997 which allowed six years where GWS was left unidentified. During this time illnesses included "fatigue, memory loss, severe headaches, muscle and joint pain, and rashes;" members of the armed forces reported that "they [were] no longer able to engage in normal daily activities, much less the rigorous tasks they completed in the military."[36] Long after an individual was discharged, the delayed onset of the illness required medical treatment, an issue that can be seen with Post-traumatic Stress Disorder.

Current war injuries, specifically Post-traumatic Stress Disorder, in Operation IRAQI FREEDOM and Operation ENDURING FREEDOM are reflective of the mental injuries Vietnam veterans received. Jones quotes the testimony of a psychologist in Tennessee v. Spawr who states certain issues can magnify the traumatic events; "(they operated in) a constant kind of unknown (and)… they never knew what to be afraid of."[37] The statement speaks directly to the fighting in Vietnam but it still holds true to the counter insurgency being fought in Iraq and Afghanistan. Identifying what PTSD is allows us to understand the nature of the illness. The National Center for PTSD defines it as:

> an anxiety disorder that can occur after you have been through a traumatic event. A traumatic event is something horrible and scary that you see or that happens to you. During this type of event, you think that your life or others' lives are in danger. You may feel afraid or feel that you have no control over what is happening.[38]

PTSD does not always manifest by itself; it can take years to develop and is triggered by a related event in the future.[39] The discreet nature of PTSD can deceive leaders from assessing the root issues of an individual, which is why Congress directed that an assessment is made prior to separating a member of the armed forces for other than honorable (OTH) discharges.[40] This provides a screen to prevent administrative action against service members for actions directly related to PTSD, but, due to the delayed effects, an individual may not have any symptoms yet. As the PTSD symptoms develop, according to the Mayo Clinic, "Getting treatment as soon as possible … may prevent long-term post-traumatic stress disorder."[41] When delayed symptoms arise, it is beneficial to get treatment quickly in order to lessen the harm on those injured.

Traumatic Brain Injury (TBI) is often seen with PTSD and the comorbidity of symptoms compounds a difficult diagnosis.[42] TBI is a result of a "sudden blow or jolt to the head…occurring from some type of trauma" and often adds more stress by making normal life events more difficult.[43] "The Department of Defense and the Defense and Veteran's Brain Injury

Center estimate that 22% of all OEF/OIF combat wounds are brain injuries…(and that) 10-15% of patients may go on to develop chronic post-concussive symptoms."[44] The problem arises when TBI is not identified initially or the recommended treatment is impeded because of continuous operations in a combat environment. There are "no screening instruments available can reliably make the diagnosis…The current VA screening tool is intended to initiate the evaluation process, not to definitively make a diagnosis."[45] The latent effects, the delay in treatment and the delay in diagnosis do not allow for immediate treatment during an individual's honorable period of service.

An illness' incubation period cannot be easily identified in many combat injuries. Agent Orange, Gulf War Syndrome, PTSD and TBI can all manifest long after the service member has returned from combat. This inhibits a direct correlation between an experience and symptoms. The time delay associated with the injury blurs the record of events leading up to an injury and makes it difficult to prove a claim.[46] Because of this dormancy, it was difficult to provide a direct service connection to the illness. The U. S. Court of Appeals, in *Collette v. Brown*, set the standard that "the VA must accept a combat veteran's explanation of the circumstances of his or her injury or disease unless solid evidence exists that rebuts the veteran's account of the facts."[47] Currently a record of being in a combat environment and the veteran's account allow a direct service connection for medical care.[48] Quick treatment upon identification of illnesses due to an extended incubation period will also help reduce the long term effects.

HOW TO OVERCOME IMPEDIMENTS

When deciding on the limits of the government's moral obligation, another question must be asked because our government operates on limited resources. If a service member discharged

under dishonorable conditions receives benefits, is it a moral wrong to limit care by reducing funding for the honorable veteran? Veteran populations are decreasing, but the older Vietnam era veterans need more extended and rural care, increasing operating costs.[49] Increasing the number of veterans needing medical benefits will reduce the money available and relative number of medical providers available to treat honorably discharged veterans. Although true, ensuring that all combat injuries are treated meets the moral obligation the government has to combat injured service members and the civilian population with minimal impact on current care for honorably discharged veterans. A breakdown of cost and an analysis of how the costs will affect the current population of veterans will be reviewed to determine any moral objections to expanding the current policy.

There are approximately five million veterans[50] receiving medical care from the VA, resulting in an average cost of $10,800 per veteran.[51] Assuming a five percent less than honorable replacement rate on average (based on 2010 accessions of 157,000)[52] approximately 8,000 veterans per year equaling 320,000 veterans over the last 40 years can regain potential eligibility of medical care. Of those 320,000 we will assume fifty percent served in combat based on OIF/OEF statistics,[53] 160,000 could now apply for medical care if they received a delayed onset injury. Using the most conservative number of combat service members, this addition would only decrease the average cost available by $300 to $10,500 per veteran but increase the strain on an over taxed medical system. Overall, the level of care that would change is minimal compared to impact of providing care for debilitating illnesses garnered *in the line of duty* and following our moral principles.

The Honorable Joe Wilson, ranking member of the military personnel subcommittee for the House of Representatives, commented in a congressional hearing that “this nation has no

greater responsibility than to provide care (to those) who endure the horrors of war to protect our freedom...regardless of cost."[54] He was speaking specifically to ensure combat veterans do not get other than honorable (OTH) discharges for issues resulting from the symptoms of a combat injury. The medical examination to assess an OTH discharge is a requirement outlined in Section 512 of the National Defense Authorization Act of FY10; it is not applicable to bad conduct or dishonorable discharges. The Congressman's statement can be applicable to all service members who served an honorable combat tour, regardless of the discharge for the overall service. Currently the government provides medical benefits to felons and those prosecuted for misdemeanor crimes after an honorable tour of service. Providing medical treatment for all combat injuries received under honorable conditions fits with what we *ought to do* vice what we are legally bound to do for felons with honorable service. It is merely a difference in time from when the injury was diagnosed and before the crime was committed. How is it morally acceptable to provide full medical benefits for a veteran that served honorably but has committed murder under civilian law and not provide minimal medical care needed to treat a combat injury occurring *in the line of* duty for having committing the same or lesser crime under the UCMJ? A waiver ought to be granted.

CONCLUSION

There are medical services that less than honorably discharged service members can receive but they are not always viable. Many Veteran Service Organizations (VSO) or free health care clinics provide assistance but these organizations determine their own guidelines for administering care. Even within the Department of Veterans Affairs, the same individual will either receive or not receive care based on the subjective determination of what conditions other

than dishonorable means to the particular VA regional office. The initial thought that a service member should not receive medical care because of dishonorable service is inconsistent with the application of policy. The policy is also inconsistent with the belief that committing a crime absolves the government from issuing medical care to a service member. What is the moral difference between a combat veteran with combat injuries who is prosecuted for felony murder under civilian law or a dishonorable discharge for murder prosecuted under the UCMJ? The former would receive full benefits and the latter would not even receive basic medical care from the VA. Worse yet, the same service member could be discharged with an OTH (equal to a misdemeanor charge) and not receive care due to willful and persistent misconduct and the veteran that served honorably but later convicted for felony murder would receive full benefits. The main difference between the individuals is when they committed their crimes in relation to being discharged but the injury was received *in the line of duty*. The policy for dishonorable service should continue to forfeit full benefits but a waiver should be granted to allow basic medical care for the combat injury. A waiver allows for medical care but reinforces that the government has met its political obligation, while allowing flexibility in the waiver's application. The flexibility will allow discretion in determining whether an initial injury was exacerbated by post-separation behavior.

Hersh quotes former Senator Don Riegle in reference to Gulf War Syndrome that there is "a precious obligation to protect those who fight the war before, during and after…if you lead people in battle, do you leave your wounded?"[55] The context of the statement is that even beyond retirement leaders have an obligation to serve those who fought in war for them. There are no regulations requiring a leader to support and defend a combat veteran after ones retirement, but the Senator argues that there is a responsibility to do something, whether it is

starting a foundation, setting up a trust fund or giving speeches.[56] This is a moral argument outside the realm of regulations and law. The Senator's statement that there is an obligation beyond the war for combat injuries is poignant because in every war analyzed above, we have seen combat injuries that have unknown and delayed effects that have taken up to thirty-four years to identify.

The delayed diagnosis of an illness and the latent onset of an illness are the crux to the moral argument. If an illness were identified following enemy contact, like a physical wound, the individual would have received initial care. PTSD is the most volatile combat injury with regards to litigation. It has developed from political action for benefits to a legal defense for insanity. Although failed in that regard, it casts doubt on who is partially responsible. Jones quotes a clinical psychologist who states that "(individual soldiers) have held inside of them experiences that are best discussed and processed … and if they aren't processed and discussed (the soldier), will develop…a values vacuum."[57] Allowing a values vacuum to develop is in direct confrontation with the government's agreement based moral obligation. Providing treatment when it is needed, based in the individual circumstances, fulfills the government's moral obligation. This obligation is to treat injuries received *in the line of duty* for the purpose of defending the country, by ensuring that policy prohibiting medical treatment of those injuries does not cause the death of the very people the original battle was meant to protect.

Adding more personnel needing care to an already taxed system will be a challenge for both money and resources. The VA will have to reduce services for all veterans or find funding to pay for the additional costs. Policy options do not have to be all encompassing. Providing waivers for certain injuries can significantly reduce the cost. The cost for treating a mental health injury for a limited time is approximately $2,600 (2004 price index) [58] which is

significantly less than the $10,500 needed to care for the full range of historical injuries. Furthermore, the treatment need only be limited in nature and conditionally based on conduct that facilitates healing. In the case of PTSD, preventing the use of drugs or alcohol that keeps an individual from recuperating would be a condition for treatment. The argument for a waiver to allow basic medical care is not an argument to exonerate an individual from a crime, nor is it to implicate responsibility of a crime onto a service, it is only that when a government sends an individual into harm's way in defense of the country, the country is obligated to treat the injury that an individual received from participating in a combat operation. An attempt could be made to extend the argument to give full medical benefits to all those with less than honorable discharges, but the government's moral obligation is limited to treating combat injuries occurring *in the line of duty* as that injury was in the defense of freedom and the American way of life.

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